UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAILCAR MANAGEMENT, LLC, Plaintiff, v. CEDAR AI, INC.; MARIO PONTICELLO; DARIL VILHENA; and JOHN DOES 1–10, Defendants, v. WABTEC CORPORATION, Third-Party Defendant.	C21-437 TSZ MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The motion to strike declarations, docket no. 60, brought by Railcar Management, LLC ("RM LLC") and Wabtec Corporation ("Wabtec") is DENIED. In April 2021, RM LLC initiated this action against ten Doe defendants, alleging that they had downloaded from RM LLC's transportation management system ("TMS") certain data of RM LLC's customers. *See* Compl. at ¶¶ 2 & 14–22 (docket no. 1). In July 2021, after conducting expedited discovery, RM LLC filed an Amended Complaint, docket no. 22, identifying as defendants Cedar AI, Inc. ("Cedar"), Mario Ponticello, and Daril Vilhena (collectively, the "Cedar Defendants"). In November 2021, the Cedar Defendants filed a responsive pleading, docket no. 31, which is denominated as their answer, affirmative defenses, counterclaims, and third-party complaint; the responsive pleading asserts federal and state antitrust and other counterclaims against RM LLC, and it names Wabtec (RM LLC's parent company) as a third-party defendant. Attached to the Cedar Defendants' responsive pleading are eighteen exhibits, three of which are

declarations by individuals working for customers of either RM LLC or Cedar. Two of these declarations indicate that, contrary to the allegations of RM LLC's Amended Complaint, the Cedar Defendants had legitimate access to the inventory data of the particular RM LLC customers at issue. The other declaration concerns a customer's transition from using RM LLC's TMS to using Cedar's TMS, offering factual support for the Cedar Defendants' theory that this litigation is retaliatory and/or anticompetitive in nature. In seeking to strike these declarations, RM LLC and Wabtec fail to make the requisite showing that they contain "redundant, immaterial, impertinent, or scandalous matter." *See* Fed. R. Civ. P. 12(f); *see also Novva Ausrustung Grp., Inc. v. Kajioka*, No. 2:17-cv-1293, 2017 WL 2990850, at *1–2 (D. Nev. July 13, 2017) (articulating the standards applicable to Rule 12(f) motions, which are "heavily disfavored"). In addition, RM LLC's and Wabtec's reliance on Rules 10(c) and 12(d) is misplaced. The former rule indicates that a copy of a written instrument attached as an exhibit to a pleading is "part of the pleading for all purposes," Fed. R. Civ. P. 10(c), and the latter rule requires that a motion pursuant to Rules 12(b)(6) or 12(c) be treated as a motion for summary judgment if the Court considers "matters outside the pleadings," Fed. R. Civ. P. 12(d). Neither rule addresses the striking of declarations appended to a pleading and, regardless of whether exhibits to a pleading are "written instruments" within the meaning of Rule 10(c), Ninth Circuit jurisprudence allows the Court to consider such materials without converting a motion to dismiss into a motion for summary judgment. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *see also N. Indiana Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 452-53 & n.4 (7th Cir. 1998) (observing that, historically, "written instrument" was interpreted to include affidavits, and a broad interpretation "comports with the traditionally generous nature in which [courts] view pleadings"). Thus, for purposes of RM LLC's and/or Wabtec's separate motions to strike affirmative defenses and dismiss the counterclaims and third-party claims, respectively, that are asserted against them, the declarations at issue will be treated as part of the Cedar Defendants' responsive pleading.

(2) Railcar Management, LLC's motion to strike affirmative defenses, docket no. 61, is DENIED. The Cedar Defendants have asserted six affirmative defenses: (i) failure to state a claim; (ii) unjust enrichment; (iii) unclean hands; (iv) equitable estoppel; (v) laches; and (vi) abuse of process. Contrary to RM LLC's argument, the Cedar Defendants were entitled to plead failure to state a claim in lieu of making a separate motion under Rule 12(b)(6) and thereby avoid waiving such defense. *See* Fed. R. Civ. P. 12(h)(1). With respect to the Cedar Defendants' remaining affirmative defenses, the Court's inquiry is whether the responsive pleading gives RM LLC "fair notice." *See Wyshak v. City Nat'l Bank*, 607 F.2d 824, 827 (9th Cir. 1979). "Fair notice" means merely describing the defense in general terms; it does not require detailed factual allegations. *See Ernest Bock, L.L.C. v. Steelman*, No. 2:19-cv-1065, 2021 WL 4750726, at *2–3 (D. Nev. Sep. 22, 2021) (concluding that the pleading standards articulated in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), do not apply to affirmative defenses (citing *Fed. Trade Comm'n v. AMG Servs.,*

Inc., No. 2:12-cv-536, 2014 WL 5454170, at *5 (D. Nev. Oct. 27, 2014) (observing that Rule 8(c), which governs affirmative defenses, does not require a "short and plain" statement and is not subject to *Twombly* or *Iqbal*))). In deciding a motion to strike affirmative defenses, the Court must view the pleadings in the light most favorable to the non-moving party. *See Seattlehaunts, LLC. v. Thomas Family Farm, LLC*, No. C19-1937, 2020 WL 5500373, at *4 (W.D. Wash. Sept. 11, 2020). Having thoroughly reviewed, through the appropriate lens, both RM LLC's Amended Complaint, docket no. 22, and the Cedar Defendants' responsive pleading, docket no. 31, the Court concludes that, although the affirmative defenses are terse and boilerplate in nature, when linked to the facts alleged in both operative pleadings, they provide RM LLC with sufficient notice concerning the contours of the asserted defenses. *See McElmurry v. Ingebritson*, No. 2:16-cv-419, 2017 WL 9486190 (E.D. Wash. Aug. 14, 2017). Whether the affirmative defenses have merit is a question for another stage of this litigation. With respect to abuse of process, the Court treats the pleaded defense as a compulsory counterclaim. *See Pochiro v. Prudential Ins. Co. of Am.*, 827 F.2d 1246, 1252–53 (9th Cir. 1987) (holding that abuse of process is a compulsory counterclaim in the action that is allegedly abusive); *see also* Fed. R. Civ. P. 8(c)(2) ("If a party mistakenly designates . . . a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated . . . ."). Regardless of whether abuse of process is an affirmative defense or a counterclaim, it has been adequately pleaded.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 29th day of April, 2022.

Ravi Subramanian
Clerk

s/Gail Glass
Deputy Clerk